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**JUL 25 2003**

**OFFICE OF PETITIONS**

In re Application of	:	
David Meisel	:	
Application No. 09/772,736	:	DECISION DISMISSING
Filed: 30 January, 2001	:	PETITION
Attorney Docket No. MIA-10004/36	:	

This is a decision on the petition filed on 6 June, 2003, which is treated as a petition under 37 CFR 1.78(a)(3), to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of a prior-filed nonprovisional application.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after 29 November, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) of the prior-filed application, unless previously submitted;<sup>1</sup>

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was

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<sup>1</sup>Any nonprovisional application or international application designated the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designated the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS)) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

unintentional.

The petition is dismissed because the priority information in the amendment submitted with the present petition is not in proper form. The amendment states that "[t]his application is a continuation-in-part of U.S. patent application Serial No. 09/772,736 filed January 30, 2001..." A patent application cannot be a continuation-in-part of itself.<sup>2</sup>

Petitioner should provide an amendment containing an appropriate claim to priority with any renewed petition.

**In order to expedite consideration, petitioner may wish to submit the substitute amendment by facsimile to the number indicated below and to the attention of Senior Petitions Attorney Douglas I. Wood.**


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By FAX: (703)308-6916  
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2201 South Clark Place  
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Telephone inquiries should be directed to Senior Petitions Attorney Douglas I. Wood at 703-308-6918.

  
Beverly M. Flanagan  
Supervisory Petitions Examiner  
Office of Petitions

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<sup>2</sup>It is noted that Application No. 10/155,629 was filed as a continuation-in-part of the present application on 24 May, 2002. Thus, it appears that petitioner may have intended to file the present petition in Application No. 10/155,629.